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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,577	02/12/2001	Victor I. Chomenky	P775 CON 2	9300
28390	7590	11/02/2005	EXAMINER	
MEDTRONIC VASCULAR, INC. IP LEGAL DEPARTMENT 3576 UNOCAL PLACE SANTA ROSA, CA 95403			SHAY, DAVID M	
		ART UNIT	PAPER NUMBER	
		3735		

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TAK

Office Action Summary	Application No.	Applicant(s)	
	09/783,577	CHORHENKY ET AL.	
	Examiner	Art Unit	
	david shay	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on August 4, 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 24-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 24-37 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 24-37 rejected under 35 U.S.C. 103(a) as being unpatentable over Weinberger in combination with Clayton and Parker et al ('421). Weinberger teaches a method of preventing restenosis by applying radioactive radiation to the blood vessel to reduce the proliferation of smooth muscle cells. Clayton teaches the equivalence of X-rays and radioactive radiation for killing undesirable tissue. Parker et al teach the use of X-rays to treat tissue. It would have been obvious to the artisan of ordinary skill to employ the source of Parker et al in the method of Weinberger, since these are equivalent for killing tissue as taught by Clayton and since the method of Parker et al reduces the side effects of radiation therapy on normal tissue, and to provide a close 1-50 grays per minute and irradiation time of one minute, since this is merely a matter of design choice as it is not critical, and provides no unexpected result; and to employ an exchange tube or a guidewire to advance the x-ray catheter, since these are old and well known methods of placing instruments in blood vessels, official notice of which is hereby taken, thus producing a method such as claimed.

Claims 24-37 rejected under 35 U.S.C. 103(a) as being unpatentable over Weinberger in combination with Clayton, Siruel et al, and Parker et al ('421). Weinberger teaches a method of preventing restenosis by applying radioactive radiation to the blood vessel to reduce the proliferation of smooth muscle cells. Clayton teaches the equivalence of X-rays and radioactive radiation for killing undesirable tissue. Sireul et al teach that jackets can take the form of coatings. Parker et al teach the use of X-rays to treat tissue. It would have been obvious to the artisan of ordinary skill to employ the source of Parker et al in the method of Weinberger, since these are

equivalent for killing tissue as taught by Clayton and since the method of Parker et al reduces the side effects of radiation therapy on normal tissue, to form the jacket of Parker et al as a coating, as taught by Sireul et al, since this would produce a slimmer (smaller profile) and lighter device, and to provide a close 1-50 grays per minute and irradiation time of one minute, since this is merely a matter of design choice as it is not critical, and provides no unexpected result; and to employ an exchange tube or a guidewire to advance the x-ray catheter, since these are old and well known methods of placing instruments in blood vessels, official notice of which is hereby taken, thus producing a method such as claimed.

Applicant argues that the amended claims read over the applied art due to the recitation of the use of a tube of a particular structure in the method. However, this argument is not convincing as the structure does not manipulatively affect the method (see *Ex Parte Pfeiffer*, 782 O.G. 639, 1962 CD 408). However, to advance prosecution, the examiner has included a rejection which includes the claimed structure.

Applicant's arguments with respect to claims 24-37 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

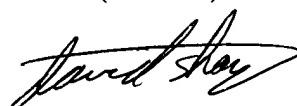
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader, can be reached on Monday, Tuesday, Thursday, and Friday at (571) 272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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PRIMARY EXAMINER
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